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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,) Case No. 5:08-cr-00156 (JW)
12 Plaintiff,)
13 v.) MOTION TO MODIFY WITNESS
14 RODRIGUEZ,) SUBPOENA
15 Defendant.)
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Hearing Date: August 5, 2008
Hearing Time: 9:00 a.m.
Judge: Hon. James Ware

1 Sophia Watkins, by and through her undersigned counsel, respectfully submits this
 2 memorandum in support of her motion to have the court modify her subpoena to testify to allow her to
 3 delay her presence at trial until after the completion of her current and previously planned trip to the
 4 Middle East on August 14, 2008. Ms. Watkins understands that modification of her subpoena may
 5 necessitate a brief continuance in the trial, but submits that the extraordinary expense of returning to the
 6 United States, combined with the irreparable loss that would be associated with such a return, warrant
 7 such action by the Court. **Unless the court can rule on this motion by tomorrow morning, Friday,**
 8 **August 1, Ms. Watkins will have already boarded a plane for the United States and this motion**
 9 **will be moot.**

10 **I. COMPELLING MS. WATKINS TO INCUR THE EXPENSE OF A ROUND TRIP**
TICKET TO THIS DISTRICT AND TO LEAVE HER AILING FATHER AND MINOR
CHILDREN IN THE MIDDLE EAST IS UNREASONABLE AND OPPRESSIVE.

12 Ms. Watkins, a potential witness in this case, is currently on a once-in-a-lifetime trip with
 13 her 80-year old father, for whom she is the primary caregiver, and her four minor children in the Middle
 14 East, having departed on July 21, 2008, with a return date of August 13, 2008.

15 The purpose of this trip is to allow her father to visit the land of his birth, which he has
 16 not seen for 50 years, for the last time. Ms. Watkins apparently planned this trip months before being
 17 subpoenaed to testify in this trial and informed the Government as to this fact upon receipt of the
 18 subpoena, some time before the July 21, 2008. It is my understanding that this Court made it clear at a
 19 pretrial conference, perhaps on July 24, 2008 that Ms. Watkins' testimony was material to this case. I
 20 am further informed that the Government indicated to Ms. Watkins prior to her departure that she
 21 needed to commit to return from her vacation to testify or they would detain her as a material witness.
 22 Ms. Watkins so committed and has since purchased what I have been informed is a \$6,000 refundable
 23 ticket to be present at trial to testify as prescribed by her subpoena.

24 She understands that her request may present an inconvenience to the Government, the
 25 Court, and the defendant and sincerely regrets the need to request this accommodation. She apologizes
 26 for her delay in filing this motion, but was unable to retain counsel until this week, and counsel was in
 27 turn unable to locate Ms. Watkins until the afternoon of July 30, 2008. Nonetheless, Ms. Watkins
 28 respectfully submits that the expense of purchasing airfare at the cost of \$6,000 and the emotional

1 trauma of leaving an ailing father and four minor children in the Middle East to travel around the world
 2 to give a moment of testimony at Mr. Rodriguez's trial is unreasonable and oppressive. She has
 3 cooperated and intends to continue to cooperate with the Government's requests. The burden imposed
 4 by the instant subpoena is, however, simply too great. While the Government has indicated an intention
 5 to compensate Ms. Watkins at least in part for the cost of purchasing airfare to and from the Middle East
 6 for the purpose of testifying, such partial monetary remuneration is insufficient to compensate
 7 Ms. Watkins for the disruption of this irreplaceable trip and the emotional hardship of leaving an aged
 8 father and four dependent children in the Middle East.

9 There are a number of alternatives that would avoid this hardship, any of which
 10 Ms. Watkins would welcome. One such alternative would be to continue as planned with jury selection
 11 on August 4, 2008, while postponing the presentation of evidence and/or opening statements to a date
 12 that would allow for Ms. Watkins' return in the ordinary course – perhaps August 14, 2008, the day after
 13 she had originally planned to return. Alternatively, the Court could simply make a finding regarding the
 14 necessity of Ms. Watkins' testimony and her unavailability, exclude time under the Speedy Trial Act,
 15 and continue the trial date for ten days. Regardless of the means adopted by this Court, Ms. Watkins
 16 would be deeply appreciative of the opportunity to care for her family and complete her vacation as she
 17 planned prior to the interruption presented by these proceedings.

18 CONCLUSION

19 For the foregoing reasons, we respectfully request that this Court modify Ms. Watkins'
 20 subpoena to allow her to testify in this case on or after August 14, 2008.

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 22 Dated: July 31, 2008

23 /s/ Jason de Bretteville

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Attorney for **SOPHIA WATKINS**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE VENUE**

UNITED STATES OF AMERICA,) Case No. 5:08-cr-00156 (JW)
Plaintiff,)
v.) [PROPOSED] ORDER MODIFYING
RODRIGUEZ,) WITNESS SUBPOENA
Defendant.)
Judge: Honorable James Ware

On July 31, 2008, Sophia Watkins filed an ex parte motion for an order modifying her subpoena to testify. Upon consideration of motion, and good cause appearing, the Court GRANTS the motion.

IT IS HEREBY ORDERED that Sophia Watkins shall not be required to testify in the above captioned case until on or after **August 14, 2008**.

SO ORDERED.

Dated:

The Honorable James Ware